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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/518,975	12/21/2004	Timothy Ian Moore		2906

23617 7590 01/16/2007  
JOHN V STEWART  
1308 HENRY BALCH DRIVE  
ORLANDO, FL 32810

EXAMINER
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PHAM, HUONG Q

ART UNIT	PAPER NUMBER
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3772

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/16/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/518,975

Applicant(s)

MOORE, TIMOTHY IAN

Examiner

Huong Q. Pham

Art Unit

3772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-7, 9-19, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-19, 21, 22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/21/04
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4- 7, 9- 15, 19, 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Wilkerson ( 4,590,932).

Wilkerson teaches the structure recited in claims 1, 21, including a shell 12 for an ankle brace , the shell being semi-rigid ( semi-rigid is a relative term) and having an inner surface shaped to be able to conform to a side surface of a person's leg between an upper extent above the person's ankle bone and a lower extent below the person's ankle bone but above the base of the heel , and between a forward extent towards the front of the person's leg and a rearward extent towards the rear of the person's leg, the shell having a portion shaped to register the shell with respect to the person's ankle bone( notes figures 1, 3, 4), and the shell being bifurcated by a slot extending from the upper extent towards a registration portion. As for claim 4, note that the registration portion is provided by a hole for snugly receiving the protruding part of the ankle bone. As for claim 5, note in figures 1, 3, 4 that the slot opens into the hole. As for claim 6, note that the slot stops short of the hole. As for claim 7, note that the pad 12 is made of thermo plastic foam which is capable of

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being conformed to the protruding part of the ankle bone, and therefore including the registration portion with a recess in the inner surface of the shell for receiving the protruding part of the ankle bone. As for claim 11, note that the registration portion shown in figures 1, 3, 4 has a portion which is a non-circular outline. As for claim 12, note that the shell has a generally uniform thickness. As for claim 13, note the adjustably strapping means 17 (figure 5). As for claims 15,19, note figure 7.

Claims 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Reithofer ( 5,527,269).

Reithofer teaches an ankle brace comprising a medial shell, the medial shell being semi-rigid and having an inner surface capable of being shaped to conform to the medial side surface of a person's leg between an upper extent above the person's ankle bone and a lower extent below the person's ankle bone but above the base of the heel, and between a forward extent towards the front of the person's leg and a rearward extent towards the rear of the person's leg, a lateral shell, the lateral shell being semi-rigid and having an inner surface capable of being shaped to conform to the lateral side surface of the person's leg between an upper extent above the person's ankle bone and a lower extent below the person's ankle bone but above the base of the heel, and between a forward extent towards the front of the person's leg and a rearward extent towards the rear of the person's leg, and means 3, 4, 5, 6 (figure 1) for adjustably strapping the shells to the person's leg, each shell having a respective portion 9, 10 (figures 1,2)

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shaped to register that shell with respect to the person's ankle bone, and each shell being bifurcated by a respective slot extending from the respective upper extent towards respective registration portion.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-3, 16, 22 are rejected under 35 U.S.C. 103(a) as obvious over Wilkerson ( 4,590,932).

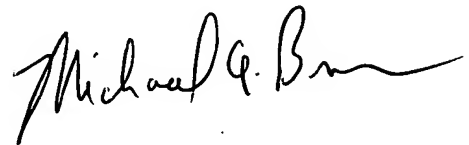
As for claims 2, 3, while Wilkerson does not mention the dimension of the slot, note that the width of the slot above the registration portion is about at least 5 mm and is about at most 30 mm. Note that the provision for the dimension of the slot is well within the realm of one ordinary skill in the art. As for claims 16, 22, figures 1, 3, 4 show that the projecting region projects by a maximum distance of about 60 mm + 10 mm from the tip of the person's ankle bone . The provision for the dimension of the projecting region is well within the realm of one ordinary skill in the art.

Claims 1, 17 are objected to because " registration portion" lack proper antecedent basis.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Huong Q. Pham whose telephone number is (571) 272-4980. The examiner can normally be reached on 8:45 AM - 5:15 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



January 3, 2007

**MICHAEL A. BROWN**  
**PRIMARY EXAMINER**